



COMDTINST 12310.3A
FEB 10 1999

COMMANDANT INSTRUCTION 12310.3A

Subj: RESTRICTIONS ON EMPLOYMENT OF RELATIVES

1. PURPOSE. This Instruction provides information and guidance concerning the restrictions on employment of relatives by public officials.
2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of Headquarters units, assistant commandants for directorates, Chief Counsel, and special staff offices at Headquarters shall ensure compliance with the provisions of this directive.
3. DIRECTIVES AFFECTED. Restrictions on Employment of Relatives, COMDTINST 12310.3, is canceled.
4. BACKGROUND.
 - a. Section 3110, Title 5, U. S. Code (U.S.C.), restricts the employment of relatives of a public official in the official's agency or in one over which the public official exercises any jurisdiction or control. The restrictions apply to positions whose pay is derived from nonappropriated as well as appropriated funds.
 - b. The restrictions on employment of relatives apply to appointment, employment, promotion, or advancement in the competitive service and the excepted service.
 - c. Federal regulations governing the restrictions on employment of relatives are contained in 5 Code of Federal Regulations (C.F.R.) Part 310.
5. DISCUSSION. The employment of relatives in the same organization tends to have a number of undesirable results. It sometimes leads to requests to employing offices which are difficult to refuse without deterioration in delicate relationships. The appearance of favoritism in the consideration of applicants and employees is given. The burden of day-to-day supervision is complicated and increased. Decision-making in connection with the assignment and separation of personnel is complicated. Finally, the employment of relatives in the same organization breeds misunderstanding and resentment on the part of the general public that the Coast Guard may not be safekeeping the taxpayers' interests in a strictly impartial and objective manner.

6. DEFINITIONS. The following definitions apply:

- a. Relative means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.
- b. Public official is anyone (including Coast Guard military personnel or personnel of another military service assigned to the Coast Guard) who by law, rule, regulation, or delegation has authority to appoint, employ, promote, or advance individuals within the agency, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency. Therefore, anyone who has authority to appoint, employ, promote, advance or to recommend appointment, employment, promotion, or advancement is a public official. In that performance appraisals have a potentially important and influential effect in the appointment and promotion processes, it is concluded that a supervisor who is responsible for rating the performance of his or her employees is also to be regarded as a public official for the purposes of this Instruction. Similarly, a personnel or placement official who has such authority is a public official; except that making a determination that a person is eligible for appointment under applicable laws, regulations, or standards does not by itself constitute a recommendation.
- c. Chain of command is the line of supervisory personnel that runs from a public official up to the head of the official's agency, or down to subordinate supervisors.
- d. Agency means the Department of Transportation (DOT) and each of its operating administrations.

7. RESPONSIBILITIES.

- a. The Chief, Civilian Personnel Management Division, Coast Guard Personnel Command (CGPC-cpm) shall ensure that the restrictions listed in this Instruction are not violated when processing recruitment, promotion, and reassignment actions. The Chief, CGPC-cpm is also responsible for providing proper information and guidance to supervisors and employees in regard to restrictions on employment of relatives.

- b. Supervisors and other management officials shall familiarize themselves with this Instruction and comply with its provisions.

8. RESTRICTIONS.

a. On Advocacy.

- (1) A public official in the Coast Guard shall not advocate the appointment, employment, promotion, or advancement of a relative in or to a civilian position anywhere in the agency where that official exercises any jurisdiction or control. A public official advocates appointment if the appointment action is recommended or suggested, either orally or in writing. Also, a public official advocates selection if a relative is referred for consideration to one of the official's subordinates, i.e., to someone lower in the chain of command. A referral for consideration, in this context, is any action, even though short of an actual recommendation, that reveals an interest in securing or facilitating a person's consideration for appointment, employment, promotion, or advancement. (Examples of referrals are the transmittal of applications to personnel or line officials, or providing a letter of introduction. However, merely depositing an application in the "incoming box" of a personnel office in an anonymous fashion is not a "referral" in this sense.)
- (2) A public official may reply to an appropriate inquiry about the suitability or qualifications of a relative who has applied for employment within the DOT. However, a public official must not respond to any inquiry or question which requests or would indicate a recommendation or advocacy for employment. (For example, an official should decline to answer, on the grounds that it would constitute a violation on advocacy restrictions, a question such as, "Would you recommend this person for employment in DOT?")
- (3) While a public official may respond to an inquiry as discussed in paragraph 8.a.(2), he or she may not be in a position as supervisor of a relative, responsible for evaluating or appraising the performance of the subordinate or of reviewing or approving any such appraisal.

b. On Personnel Actions.

- (1) A public official (military or civilian) in the Coast Guard shall not appoint, employ, promote, or advance in or to a DOT civilian position: (a) one of his or her relatives, or (b) the relative of any other public official in the agency if that official has recommended or advocated the action. Additionally, a personnel or placement official may not use his or her authority to appoint or advance the employment of a relative of any official within the chain of command.

COMDTINST 12310.3A

- (2) A relative of a public official may not be promoted if the public official was a member of the promotion panel that selected the relative for promotion unless the public official asked to be disqualified and did not participate in the decision affecting the relative.

c. Employment of Subordinates.

- (1) No relative of a Coast Guard public official may be employed or assigned in any position in which the public official may be able to directly or indirectly supervise, control, or influence the work or employment status of the relative or the affairs of the organization in which the relative is to be employed. Supervision in this sense is not limited to authority to appoint or promote or to recommend appointment or promotion, but extends to such factors as the making, approval, or review of performance appraisals, the setting of hours of duty, the granting of leave, or the assignment of work. Regardless of the organizational standing and location of the employee within the chain of command, supervisor-employee relationships (or team leader-employee relationships) between military or civilian relatives are similarly prohibited.
- (2) Any situation which gives rise to a relative supervisor-employee relationship or a team leader-employee relationship requires resolution within 60 calendar days.

9. SELECTION OF RELATIVES FROM CERTIFICATES OF ELIGIBLES.

a. Preference Eligibles.

- (1) The restrictions in this Instruction do not prevent the appointment in the competitive service of a relative who is a preference eligible if: (a) the relative's name is within reach for selection from an appropriate Office of Personnel Management certificate of eligibles, and (b) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting a person who is not a preference eligible.
- (2) A public official cannot later promote or advocate the promotion of a relative who is appointed under the provisions of paragraph 9.a.(1) above. That provision applies to appointments only.

- b. Nonpreference Eligibles. Appointing officials may not consider a nonpreference eligible on a certificate if appointment of the eligible is prohibited by the restrictions in this Instruction. The appointing official should consider the next available eligible instead.

10. EMERGENCY EXCEPTIONS. When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in 5 C.F.R. 230.402(a)(1), a Coast Guard official may employ relatives to meet those needs without regard to the restrictions in Section 3110 of Title 5, United States Code, and this Instruction. Appointments under these conditions are temporary not to exceed one month, but may be extended for a second month if the emergency need still exists.
11. CONFLICT OF INTEREST. An agency may prohibit the employment of relatives if it can justify this prohibition on conflict of interest grounds pursuant to Executive Order 11222 and 5 C.F.R. Part 735 (governing employee conduct) or other reasons which might be disruptive to work and interfere with the orderly operation of the agency's mission.
12. PENALTIES. Section 3310c, Title 5, U.S.C., provides that " An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced." By regulation, payments made in violation of 5 U.S.C. 3110 are subject to recovery. In addition, public officials who violate Federal regulations governing the employment of relatives are subject to applicable penalties on this account.

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